

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED
JAN 11 2016

Shannon
CLERK

Greg A. Haanen,)
)
Plaintiff,)
)
v.)
)
North Star Mutual Insurance Company,)
)
Defendant.)

NOTICE OF REMOVAL

16-1007

TO: Plaintiff Greg A. Haanen and his attorneys, Gordon P. Nielsen, DELANEY NIELSEN SANNES, P.C., P.O. Box 9 520 2nd Ave. E. Sisseton, SD 57262 and Lee Schoenbeck, Joshua G. Wurgler, SCHOENBECK LAW, P.C., P.O. Box 1325 Watertown, SD 57201:

COMES NOW Defendant North Star Mutual Insurance Company (“North Star”), through its undersigned counsel, and pursuant to 28 U.S.C. §§ 1332 and 1441, and hereby gives notice of the removal of this action to the United States District Court for the Northern Division of South Dakota. As grounds for this removal, North Star states:

1. On or about December 22, 2015, Plaintiff served a Complaint against North Star in the Circuit Court of the Fifth Judicial Circuit in and for Roberts County, South Dakota. The Circuit Court of the Fifth Judicial Circuit in and for Roberts County, South Dakota, is a state court within this judicial district.

2. A copy of the file of the Circuit Court of the Fifth Judicial Circuit for Roberts County, South Dakota, is attached hereto as Exhibit A. There have been no other process, pleadings, or orders served to date other than those contained in Exhibit A.

3. This Notice of Removal is timely under 28 U.S.C. § 1446(b) as it is filed within 30 days of receipt by North Star, through service or otherwise, of a copy of the initial pleading setting forth the claims for relief upon which Plaintiff's action is based.

4. This case is properly removable under 28 U.S.C. § 1441(a) because the United States District Court has original jurisdiction of this case under 28 U.S.C. § 1332(a).

5. Complete diversity of citizenship exists between the parties. Plaintiff Greg A. Haanen is a resident citizen of the State of South Dakota. (Complaint at ¶1.) Defendant North Star is a Minnesota insurance company whose principal place of business is located in Cottonwood, Minnesota.

6. The amount in controversy is not stated in the Complaint; however, pursuant to 28 U.S.C. § 1446(c)(2)(A)(ii), the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. In the Eighth Circuit, a defendant need only establish by a mere "preponderance of the evidence" that the amount in controversy requirement is satisfied. *Kopp v. Kopp*, 280 F.3d 883, 884 (8th Cir. 2002). This Court has subject matter jurisdiction if "a fact finder could legally conclude, from the pleadings and proof adduced to the court before trial, that the damages that the plaintiff suffered are greater than \$75,000." *Id.* at 885. Plaintiff's Complaint does not expressly request damages in excess of \$75,000.00, but Plaintiff seeks an unlimited amount of compensatory damages, punitive damages, and statutory attorney's fees. Accordingly, based on the face of Plaintiff's Complaint alone, a fact finder most certainly could legally conclude that this action exceeds the sum or value of \$75,000.00 exclusive of interests and costs.

7. All other requirements for removal are satisfied. This case is a civil action within the meaning of the Acts of Congress relating to the removal of causes. North Star has heretofore sought no similar relief. A copy of this Notice is being filed with the Circuit Clerk of the Fifth Judicial Circuit for Roberts County, South Dakota, as provided under 28 U.S.C. § 1446. North Star is also giving prompt written notice to Plaintiff of the filing of this Notice of Removal. No consent by any other party is required as there are no other defendants.

WHEREFORE, Defendant North Star Mutual Insurance Company respectfully requests that this Court take jurisdiction of this action and issue all necessary orders and process to remove this action from the Circuit Court of the Fifth Judicial Circuit in and for Roberts County, South Dakota, to the United States District Court for the Northern Division of South Dakota.

ARTHUR, CHAPMAN, KETTERING,
SMETAK & PIKALA, P.A.

Dated:

1/7/16



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Attorney for Defendant North Star Mutual Insurance Company